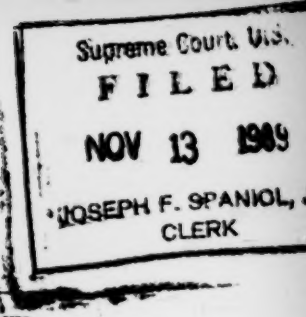


(5)

CASE NO. 89-302  
IN THE UNITED STATES SUPREME COURT  
OCTOBER TERM 1989



Linda A. Hampton and Rose O. Howard,  
Petitioners  
vs.

Tennessee Board of Law Examiners,  
jointly and severally, Katherine  
Darden, Wheeler Rosenbalm, Charles  
Burson, Valerius Sanford, Lewis Hagood,  
Joseph Tipton, Michael Whitaker, Rodney  
V. Ahles, Scott McGinness, Prince  
Chambliss, Ellen Vergos, other unknown  
examiners, Memphis State University's  
Cecil C. Humphreys School of Law,  
Thomas Carpenter, Claude Kaufman,  
Francis Sullivan, Daniel Wanat, Robert  
Banks, Nancy Barron,  
Respondents

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PETITIONERS' REPLY BRIEF

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## ISSUE PRESENTED FOR REVIEW

Whether a state court can grant absolute immunity to state defendants under a valid claim of deprivation of plaintiffs' rights under 42 U.S.C. Sections 1983 and 1985 absent a finding as to whether the defendants' actions did in fact violate the state rule governing their actions.



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## TABLE OF AUTHORITIES

Forrester v. White, 108 Supreme Ct.  
No. 538 (1988).

State ex. rel. Carden v. Fones, 539  
S.W.2d 810, (Tenn. 1976).

Stumps v. Sparkman, 435 U.S. 349  
(1972).

Tennessee Supreme Court Rule 7





## ARGUMENT

The respondents assert in their response that the Tennessee Board of Law Examiners and its members are directly related to assisting the Tennessee Supreme Court in the admission of applicants to the Tennessee <sup>Bar</sup> ~~Board~~ and that in carrying out these duties, the members of the Board perform judicial functions and are, thereby entitled to absolute immunity. This assertion by the respondents is correct only if the acts complained of do in fact fall within the jurisdiction of the Board as determined by Tennessee Supreme Court Rule 7. This is indeed a factual question requiring a trial court ruling that respondents' acts



did fall within the jurisdiction of the Board. The respondents would definitely be subject to liability if it were determined that they acted in the clear absence of all jurisdiction. See Stumps v. Sparkman, 435 U.S. 349, 357 (1978).

The records in this case, as well as the briefs filed with this Court, show that no factual finding was made by a lower court as to whether the acts complained of were within or outside the jurisdiction of the Board as provided by Rule 7. In defense of this absence of factual finding the respondents argue that even if the Court assumes the facts to be as those asserted by the petitioners, the Court should still deny the petitioners' request for certiorari because the



Board members are not required to comply with any rules or laws whatsoever. The respondents cite no authority for this proposition. See respondents' brief, p. 8 and 9. The petitioners believe this argument to be incorrect, however, since this would mean that these individuals could operate beyond their jurisdiction as granted by Rule 7. Such a conclusion would be inconsistent with this Court's holding in Stumps that individuals are subject to liability when acting in clear absence of jurisdiction.

Tennessee Supreme Court Rule 7 granted specific powers and authority to the Board of Law Examiners. It also imposed specific limitations upon the Board and its members. The



petitioners have alleged many violations of Rule 7 by the respondents. The records in this case will show that the respondents admitted to most of these alleged violations. The petitioners maintain that these violations place the respondents' acts outside their jurisdiction. Since the respondents' acts fall outside their jurisdiction, they are not entitled to a grant of absolute immunity. This reasoning is consistent with this Court's holding in Stumps that individuals are subject to liability for acts outside their jurisdiction. This reasoning is consistent with Tennessee Supreme Court Rule 7 Section 12.12 which denies the board and its members power to waive or modify this rule of court.





This reasoning is also consistent with the Tennessee case law directing that Board members accused of wrongdoing should be sued in a court of law. See State ex. rel. Carden v. Fones, 539 S.W.2d 810 (Tenn. 1976).

#### CONCLUSION

For the reasons set out above, along with the reasons set out in the petitioners' Petition For Writ of Certiorari, the petitioners respectfully request this Court to grant certiorari and remand this case back to the trial court for a factual ruling on whether the acts of the respondents violated the state rule governing their actions.



Respectfully submitted on this  
the 13 day of Nov. 1989.

CERTIFICATE OF SERVICE

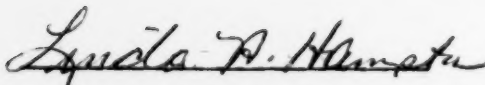
Petitioners do hereby certify that  
three true and exact copies of the  
foregoing Petitioners' Reply Brief have  
been forwarded by U.S. mail, postage  
prepaid to:

Mr. Michael W. Catalano

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